IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-19.11.2004

Coram

The Honourable Mr. Justice V. KANAGARAJ

W.P. No.9734 of 1997

Alagu Pharmacy (B),
rep. By its Proprietrix,
J. Selvarani,
515, Dr. Nanjappa Road,
Gandhipuram,
COimbatore. ... Petitioner

Vs.

1. Regional Provident Fund Commissioner,
   Coimbatore.
   O/o The Regional Provident Fund Commissioner,
   Bhavishyanidhi Bhavan,
   Post Box No.3875,
   Dr. Balasundaram Road,
   Coimbatore - 641 018.

2. Assistant Provident Fund Commissioner,
   Enforcement,
   O/o The Regional Provident Fund Commissioner,
   Bhavishuanidhi Bhavan,
   Post Box No.3875,
   Dr. Balasundaram Road,
   Coimbatore - 641 018. ... Respondents

Petition under Article 226 of the Constitution of India, praying to issue a writ of certiorari.

For Petitioner : Mr. R. Viduthalai
For Respondents : Mr. V. Vibhishanan

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O R D E R

The above writ petition has been filed praying to issue a writ of certiorari, to call for the records on the file of the second respondent pertaining to his order bearing Ref.No.C7/TN/CBE/28841/ENF/CBE.VII/96 dated 30.12.96 as confirmed by the order of the second respondent bearing Ref.No.C7C7/TN/CBE/28841/ENF/CBE.VII/97 dated 30.4.97 and quash the same.

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2. Today, when the above matter was taken up for consideration, learned counsel for the petitioner would submit that the petitioner, which is a proprietrix concern, was started on 14.4.1991; that there are two other concerns known as Alagu Pharmacy and Alagu Pharmacy (C), with which, the proprietrix of the petitioner is in no way connected; that all the three establishments are distinct and different, though the other two concerns are owned by the petitioner's husband and son along with two others; that at no point of time, the petitioner-concern employed 20 persons, so as to attract the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952(hereinafter referred to as "the Act"); that the second respondent, after calling for the relevant records and after considering the representation made by the petitioner-concern, has passed orders on 31.12.1996, holding that all the three concerns are part of the same establishment and as such, the provisions of the Provident Fund Act would apply to the petitioner-concern; that the petitioner made further representation, placing materials to show that all the three concerns are distinct and different, having no connection with the petitioner, but the second respondent passed orders on 30.4.1997, confirming the earlier order passed by him on 30.12.1996 and hence would seek for the relief extracted supra.

3. In support of his submissions, learned counsel for the petitioner relied on the decision reported in DEVESH SANDEEP ASSOCIATES & OTHERS vs. R.P.F. COMMISSIONER, BANGALORE (1997(I)L.L.J. 1167), particularly in paragraph 12, it is held:

> "To answer and to satisfy the test of functional integrality, the respondent has applied only the fact of common ownership of the two units and the location of two units in the common premises. In my view, the fact recorded and the test applied by respondent-1 is not the relevant test to consider the applicability of Section 2-A of Provident Fund Act. The predominant test as enunciated by Supreme Court and this court in *Ganapathy Bhandarkar's* case (Supra), is whether subsequent unit viz, M/s. Mody Sales and Services could survive on closure of M/s. Devesh Sandeep Associates and whether in matters of finance employment, the employer has actually kept the two units distinct or integrated. Mere fact of common ownership of the two units and mere location of the two units in common premises by itself is

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not sufficient to satisfy the test of functional integrality and further mere common object of the two units to carry on the business of sale and servicing of wall papers and similarly when two units work for each other would also not answer the test of functional integrality. The first and foremost to establish the test of functional integrality would be whether the second unit would survive in the absence of first unit or when the first unit is closed whether the second unit continues to do its business activity. This aspect has not been noticed by first respondent in its order dated September 9, 1986 and in my view, the test applied by first respondent is not the relevant test laid down by decisions of Supreme Court and this court in *Ganapathy Bhandarkar's* case (supra). In this view of the matter, the impugned order dated September 9, 1986 passed by the 1st respondent is not only opposed to the provisions of the Provident fund Act but also to the decision of jurisdictional Court."

4. Learned counsel appearing for the respondents, not only filed counter, but also submitted that A.L. Jayabalan, the husband of the petitioner is the Proprietor of the unit at Mettupalayam Road, coimbatore and partner in the capacity of kartha of Hindu undivided family in the unit at R.S. Puram, Coimbatore, wherein the petitioner's son and two others are also partners; that from this particular aspect itself it is clear that all the three units are under the ownership, management and control of the same family except two other partners at R.S. Puram unit; that the petitioner's husband Jayabalan only attended with due authorisation in the inquiry under Section 7A of the Act held in respect of the petitioner's establishment, which itself indicates that he has control over the affairs of this establishment also; that all the three establishments are not distinct and different; that the petitioner-concern had employed 19 employees during June, 1994 and July, 1994 as per its attendance register and one more employee, 'driver' was paid advance from the unit at Dr. Nanjappa Road and subsequently transferred to Mettupalayam Road accounts; that during the enquiry held on 5.9.1995, one M. Subbiah, the authorised representative of Mettupalayam Road unit had informed that he was doing part time accounting job for all three units; that the balance sheet of the petitioner establishment as on 31.3.1994 shows in the assets side that

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half share of land and building are belonging to A.L. Jayabalan, who is reported to be not connected with the petitioner-establishment; that all the three units do purchase and sell medicines; that all the three units have the same name and style and enjoy the good will of the firm in common; that the facts enumerated above establish financial integrality and unity of management among these three units; that the orders passed by the respondents are valid in law; that the petitioner has got an alternative remedy of filing an appeal before the Tribunal; that the Provident Fund Act is the social beneficial and welfare legislation for the workers; that the petitioner is seeking to prevent the enforcement of the provisions of the Act and denying the poor workers their legitimate benefits and hence would pray for dismissal of the writ petition.

5. In support of his submissions, learned counsel for the respondents relied on the decision reported in REGIONAL PROVIDENT FUND COMMR., JAIPUR vs. NARAINI & OTHERS UDYOG((1996) 5 SCC 522: 1996 (5) SCALE 500) and order dated 3.11.1998 in W.P. No.7180 of 1990 and order dated 13.9.2004 in W.P.No.5792 of 1996.

6.In the decision relied on by the learned counsel for the respondents in REGIONAL PROVIDENT FUND COMMR., JAIPUR vs. NARAINI & OTHERS UDYOG((1996) 5 SCC 522: 1996 (5) SCALE 500), it is held:

> "The definition of establishment, which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act. Accordingly, the High Court had not considered in proper perspectives of the provisions of the Act, which is beneficial legislation to provide healthy security to the workmen."

In this case, the Supreme Court has allowed the appeal filed by the Regional Provident Fund Commissioner, Jaipur. The above said decision relied on by the learned counsel for the respondents would fairly and squarely applicable to the facts of the present case.

7. The above said decision relied on by the learned counsel for the respondents reported in REGIONAL PROVIDENT FUND COMMR., JAIPUR vs. NARAINI & OTHERS UDYOG((1996) 5 SCC 522: 1996 (5) SCALE 500), is also relied on by this Court in the unreported judgment cited by the learned counsel for the respondents in W.P.No.7180 of 1990 dated 3.11.1998 and

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8. In consideration of the facts pleaded, having regard to the materials available on record and upon hearing the learned counsel for the petitioner and the respondents as well what this court is able to assess is that regarding the question which pertains to the payment of employees provident fund as per the Provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for which the basic requirement is a strength of 20 employees to be present and working under the employment of the petitioner. On the part of the petitioner, she would come forward to put up the arguments to the effect that the three concerns are distinct and different and she is a proprietrix of only one concern and not to the other two concerns and that in her concern the strength required for invoking the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is not available and therefore she cannot be compelled to effect the payments as per the provisions of the said Act.

9. On the other hand, on the part of the respondents they would put up a strong arguments to the effect that all the three concerns are owned by the family members such as the petitioner, her husband and her children and they are functioning as family units particularly the sphere of activity of all these three units are one and the same and they are inter-related and inter-connected and therefore they are not separate distinct and different units, but for the purpose of the Employees Provident Funds Act, they are considered to be only one unit and since it came to be revealed that the number of workmen working in all the three units is 20, the provisions of the said Act becomes applicable to the petitioner unit and on such grounds would seek to enforce the provisions of the said Act and hence would justify the impugned order passed by the authorities below and would ultimately pray to dismiss the above writ petition.

10. On a careful perusal of the facts and circumstances encircling the whole affair connected with the application of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and in further consideration of the propositions held by different courts and different upper Forums reported and extracted supra, this court is able to see that there is a well knit operational sphere in running all the three units and the functional integrality and financial integrality so far as all the three units are concerned and one could easily see the same being present and therefore this court is of the view that all the three concerns make only one unit for the purpose of the Act

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concerned with the subject and therefore this Court is not able to see anything wrong in the passing of the impugned orders dated 30.12.1996 and 30.4.1997 by the second respondent and hence the following order.

In result,

the above writ petition does not merit acceptance and it becomes only liable to be dismissed and is dismissed accordingly;

However, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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Copy to:

1. Regional Provident Fund Commissioner,
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+1cc to Mr.R.Viduthalai, Advocate Sr 49997

+1cc to Mr.V.Vibhishnan,Advocate Sr 50039

SMK (CO)
km/28.2.

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